vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1349 OF 2005
IN
SUIT NO.923 OF 2005

Madhavlal N. Pittie ... Plaintiff

V/s.

Mohammed Hussain Tailor ... Defendant

Ms.S.Modi for Plaintiff
Mr.Girish Desai with Ms.Geeta Shastri for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 28, 2006**

P.C.:

. The Plaintiff claims that the Defendant is a gratuitous licencee who is in possession of the suit premises viz., Room Nos.A and B in Flat No.31, situate on the 4th floor of Building bearing No.305, Bellasis Road, Shivlal Motilal Mansions at Bellasis Road, Mumbai-8. The Plaintiff claims by this Motion that the Defendant be restrained from creating any interests in respect of the suit premises. A prayer is also made for mesne profits at a monthly rate of Rs.3,333/-. According to the Plaintiff, the gratuitous licence has been terminated in 1985 and therefore, the plaintiff is claiming the mesne profits from the defendant from August 2004 onwards.

2. Admittedly, there is an order of the Small Causes Court in Suit No.2928 of 1981 dated 27.8.1981

wherein the Defendant herein has been declared a tenant of the suit premises. The Plaintiff submits that the decree obtained in the Small Causes Court was a collusive decree and the plaintiff who is the head landlord was not a party to those proceedings.

3. It is submitted that after the termination of the gratuitous licence, it is necessary to compel the Defendant to pay some amount to the Plaintiff else he will be free to continue with the suit premises free of charge.

4. This application has been opposed vehemently on behalf of the Defendant; the contention of the Defendant being that he has already been declared a tenant and proceedings for fixation of rent have also been lodged in the Small Causes Court. It is obvious therefore, that at least prima facie, the Defendant is in possession as a gratuitous licencee. The licence has been terminated already.

5. Ad-interim relief in terms of prayer clause (a) has already been granted. In my view, that order needs to be confirmed besides granting the Motion in terms of prayer clause (b). Motion is therefore made absolute in terms of prayer clauses (a) and (b).